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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.742 OF 2000

Ramesh Babulal Soni @ Chamat
Life Convict - 11264
Yeravada Central Prison
Pune - 411 006 ... Appellant

V/s.

The State of Maharashtra
(at the instance of
Kurla Railway Police Station
Kurla, Mumbai) ... Respondent

Ms.D.M. Shah, Advocate appointed for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 26, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The appeal is directed against the judgment and order of the Sessions Court convicting and sentencing the appellant to life imprisonment under section 302 of the Indian Penal Code.

2. This is an unfortunate case where the body of the deceased had to be exhumed. The prosecution's case was that the appellant had used a firearm to kill the deceased. However, the postmortem report did not describe any injury which could have been caused by a fire arm. The body was therefore exhumed.

3. It is the case of the prosecution that the deceased, who had several criminal cases pending against

him and had been convicted in some, was shot by the appellant on 23.1.1996. It is the case of the prosecution that the appellant and the deceased used to often abuse narcotic substances together. A quarrel had ensued between them on 20.1.1996. Besides the appellant and the deceased, they had a couple of other friends who used to smoke with them near the Saibaba temple close to the railway track at Kalyan. The prosecution alleges that the appellant on being enraged by the quarrel which took place on 20.1.1996 had shot the deceased three days later. The appellant was arrested on 29.1.1996. According to the prosecution, the appellant disclosed the place where the weapon used by him was hidden. This firearm has been seized by the police.

4. The prosecution has relied on 11 witnesses to substantiate its case. PW1 and PW3 are the panch witnesses. PW1 has deposed about the Spot Panchanama which was drawn up. He has stated that he and PW3 and other Hamaals employed with the railways had carried the victim who was injured, to the Office of the Station Master on platform No.1 at Vikhroli station. He has then deposed that the victim died on the way to the hospital. He has deposed regarding the seizure of the blood stained clothes of the victim. PW3, the other panch witness has proved the recovery of the weapon at the instance of the appellant.

5. PW2 is the brother of the deceased who has deposed that he was informed about the death of his brother at about 1 pm at 23.1.1996. The dead body of his brother was handed over to him on 24.1.1996 after the postmortem was conducted. This witness has admitted that his brother had several police cases against him and had also suffered imprisonment on 5 or 6 occasions. He has stated that he was told that his brother was shot dead at the railway station.

6. PW4 and PW5 were persons who often joined the deceased in abusing narcotics. However, these witnesses have been declared hostile. The prosecution has not been able to elicit any information regarding the death of the deceased from these witnesses. PW6 is the ballistic expert who has deposed that a weapon was received by the forensic laboratory from Kurla railway police station. An empty cartridge was also received alongwith the firearm and the results of the test fire showed that the chamber markings on the empty cartridge sent for analysis and the test fired cartridges were comparable. However, there is no reference to an empty cartridge being recovered from the scene of offence in the spot panchanama.

PW7 is the Doctor who had conducted the postmortem on 24.1.1996. This Doctor has opined that the cause of

death was haemorrhagic shock due to fatal brain and skull injuries sustained by the victim. He has deposed that he had informed the Investigating Officer that the weapon used for assaulting the deceased could be hard and round which could have caused one of the injuries on the victim. He has stated that it was possible that such injuries found on the person of the deceased could be caused by the appellant.

As aforesaid, the body was exhumed. PW8 is the Manager of cemetery who has deposed regarding the body being exhumed. After exhuming the body, a postmortem examination was performed by PW9. This witness has stated that he was asked to perform the postmortem only to find out whether there were any bullets present in the body. He has admitted that he could not locate any bullets. However, he has controverted the opinion of PW7 that the injuries on the skull could be caused by a long and sharp weapon like a large knife (gupti). This witness has stated that he did not notice any other injuries on the body except the skull injury. He has stated that the injuries seen by him on the dead body were possible by a firearm. He has admitted that there is only an entry wound and no corresponding exit wound on the body.

PW10 is the DCP who was authorised to issue sanction for prosecution under the Arms Act. He has merely deposed

regarding the sanction accorded by him for the prosecution.

PW11 is the Investigating Officer who has stated that the appellant was arrested on 29.1.1996 i.e., 6 days after the death of the deceased. He has admitted that there was no eye witness to the shooting on the platform and he has denied that the people on the platform did not run helter skelter after the shot was fired.

7. We have scrutinised the entire evidence on record. The prosecution case is based solely on the circumstantial evidence as there are no eye witnesses to the crime. The circumstances which the prosecution has relied on are: (1) the appellant and the deceased were known to each other and often used to abuse narcotics together alongwith other friends (2) on 20.1.1996, there was a quarrel between the appellant and the deceased (3) the deceased was found to have been shot at about 10.30 am on 23.1.1996 and (4) after the arrest of the appellant on 29.1.1996, he disclosed where he had hidden the firearm used by him to kill the deceased.

8. The postmortem examination conducted after exhuming the body of the deceased had disclosed an injury which could be sustained by a firearm according to PW9.

9. In our view, these circumstances do not complete a chain which points to the guilt of the appellant. Undoubtedly, the appellant and the deceased were known to each other. Presumably, they had quarrelled on 20.1.1996. They were both known to abuse narcotics together. The appellant also may have been involved in several criminal cases. However, this does not result in an inference that he is guilty as charged. According to the prosecution, the deceased was killed at about 10.30 am at the railway station. It is improbable that there would be no eye witnesses to the crime at that point of time on the railway station. Two of the witnesses examined by the prosecution, who are supposedly the friends of both the appellant and the deceased, have turned hostile. Therefore, there is no evidence at all indicating that it was the appellant who had shot the deceased. The appellant was arrested six days after the incident had occurred. By this time, the postmortem report was available and it showed that the death was caused due to haemorrhagic shock. There was no suggestion at all anywhere that the death occurred on account of injury received from the use of a firearm. There is no evidence on record to indicate as to why the prosecution has placed reliance on a theory that the appellant had used a firearm to kill the deceased. It is apparent that it was only after the recovery of the firearm that the police doubted the 1st postmortem report and had the body exhumed in order to conduct a

fresh postmortem. This examination led to results which the police had hoped for after recovering the firearm. However, significantly, the bullet was not found in the body. PW9, who conducted the postmortem has stated that although there was an entry wound on the body, there was no corresponding exit wound, despite which he could not locate the bullet in the body.

10. In such circumstances, we are unable to accept the findings arrived at by the learned Sessions Judge. There is a missing link in the chain of circumstances relied on by the prosecution. There is no evidence at all on record to suggest that it was the appellant who was responsible for the death of the deceased. The reliance placed by the prosecution on the recovery of the weapon is also of no consequence since the recovery has been made in circumstances which indicate that the disclosure by the appellant was far from voluntary. He was handcuffed while he was being taken to the spot where the incident had occurred. He was surrounded by the police personnel in the vehicle when he led them to his house. Apart from this, the panch witness, PW3, stated that he did not accompany the appellant and the police and nothing was recorded in his presence.

11. The ballistic expert who has been examined has stated that the empty given for analysis had chamber markings which were comparable with the test fired

cartridges. However, there is no evidence at all regarding the recovery of an empty from the spot where the incident had occurred. PW1 who has deposed regarding the spot panchanama does not mention anything about the recovery of an empty. In our opinion, therefore the prosecution case is replete with holes and their hypothesis cannot be accepted. Therefore, the Appeal is allowed. The conviction and sentence imposed by the trial Court is set aside. The appellant be released forthwith, if not otherwise required in law.

12. The fees of the advocate appearing for the appellant and the Assistant Public Prosecutor are quantified at Rs.2,000/- each.